IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.6.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.293 of 2004

The Commissioner of Income Tax
Chennai-X. .. Appellant

Vs

M/s.United India Shoe Corporation
Pvt. Ltd., Formerly M/s.United India
Shoe Corporation (Partnership Firm)
Chennai-600006. .. Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai, 'A' Bench dated 31.7.2003 made in I.T.A.No. 1536/Mds/2002 for the assessment year 1996-97 against the order of the Commissioner of Income Tax (Appeals) XII Chennai dated 17.07.2002 made in I.TA.No.5/02-03 against the order of the Assistant Commissioner of Income Tax Circle-XV, Chennai-34 dated 13.02.2002 made in GIR/P.A.No.123009-U.

For Appellant : Mrs.Pushya Sitaraman
Sr.Standing Counsel (IT)

For Respondent : Mr.M.P.Senthilkumar

JUDGMENT

(Delivered by P.D.DINAKARAN,J.)

This appeal is directed against the order of the Income Tax Appellate Tribunal, Madras, 'A' Bench dated 31.7.2003 made in I.T.A.No.1536/Mds/2002 for the assessment year 1996-97, raising the following substantial question of law:

"Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the job work charges received by the assessee would not form part of profits of business under Explanation (baa) to Section 80HHC and in further holding that 90%

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of such job charges ought not to have been excluded from such business profits from computing the deduction u/s.80HHC?"

2.1. The assessee firm is engaged in the business of manufacture and export of shoe uppers. The assessment of the assessee firm for the assessment year 1996-97 was originally completed under Section 143(3) of the Income Tax Act (for brevity, "the Act") on 13.8.1997. The Assessing Officer, subsequently, found that the assessee's claim under Section 80HHC of the Act included receipts relating to job work charges. The Assessing Officer was of the view that these receipts were wrongly included for the purpose of deduction under Section 80HHC as the same had no direct nexus with the export activities of the assessee, and accordingly, reopened the assessment and completed the same under Section 143(3) read with Section 147 of the Act.

2.2. On appeal by the assessee, the Commissioner of Income Tax (Appeals) upheld the validity of reopening of assessment by the Assessing Officer, but held that only the profit from job work should be excluded and consequently, estimated the expenses attributable to job works considering the fact that job work receipts amounted to only 4.02% of the total turnover and directed the Assessing Officer to work out the deduction under Section 80HHC of the Act.

2.3. The Tribunal, in the further appeal preferred by the assessee, accepted the contention of the assessee that 90% of the job work charges should not have been excluded while computing the deduction under Section 80HHC of the Act and allowed the appeal of the assessee. Hence, the present appeal.

3. Mrs.Pushya Sitaraman, learned Senior Standing Counsel for the Revenue fairly concedes that the issue raised in this appeal is squarely covered against them and in favour of the assessee vide the decision of Southern Sea Foods Ltd. v. Joint CIT [2007] 288 ITR 151, wherein it is held that the income derived for freezing and processing of marine products, but for which operation the export cannot be made, is an income earned by using the entire undertaking of the company, i.e., machinery and power and other manufacturing and administrative set up and therefore, the freezing and processing charges would definitely form part of one of the components of business profits, as the activity of freezing and processing would have a direct and immediate nexus to the activity of export.

4. In the case on hand, it is not in dispute that the income from job work earned by the assessee is by utilisation of the entire resources or business apparatus. The Tribunal had also found that the job work is linked to the manufacturing activity of the assessee. If that be so, we find no error or infirmity in the order of the Tribunal holding that 90% of the job work charges should not have been excluded from business profits while computing deduction under Section 80HHC of the Act.

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Under such circumstances, following the ratio laid down by the decision of this Court in Southern Sea Foods Ltd. v. Joint CIT [2007] 288 ITR 151, we answer the substantial question of law in favour of the assessee and against the Revenue and dismiss this appeal. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sasi

To:

1.The Assistant Registrar,
Income Tax Appellate Tribunal
Rajaji Bhavan,
Besant Nagar, Chennai - 90.

2.The Commissioner of Income
Tax (Appeals)-XII, Chennai.

3.The Commissioner of
Income Tax-X, Chennai.

4.The Assistant Commissioner of
Income Tax, Circle XV
Chennai.

1 cc To Mr.Pushya Sitaraman, Sr.Standing Counsel for I.T.Cases, SR.35684.

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AKR(CO)
RVL 25.06.2007

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